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DOCKET NO. D4932-25

#7

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: OSTGAARD, Odd Terje

Application No. 09/486,549

International Application No. PCT/NO98/00232

International Filing Date: 5 August 1998

Priority Date: 27 August 1997

Filed: 25 February 2000

CERTIFICATE UNDER 37 C.F.R. §1.8(a)

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED THIS DATE WITH THE UNITED STATES POSTAL SERVICE ON THE DATE SHOWN BELOW AS "EXPRESS MAIL POST OFFICE TO ADDRESSEE" MAILING LABEL NO. EV 306256965 US ADDRESSED TO MAIL STOP PETITION COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

Lewis F. Gould, Jr.
Lewis F. Gould, Jr., Reg. No. 25,057

April 6 2004
Date

For: SAFETY BOX/INCINERATION CONTAINER FOR USED SYRINGES

TRANSMITTAL LETTER

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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OPIE/JCWS

Sir:

Please find enclosed for filing:

- ✓ Petition for Revival Under 37 C.F.R. § 1.137(b);
- ✓ Declaration of J. Rodman Steele, Jr. dated March 23, 2004;
- ✓ A check in the amount of \$1270.00 for:
 - \$665.00 required petition fee under, 37 C.F.R. §1.17(m) (small entity)
 - \$540.00 U.S. Basic National application fee, 37 C.F.R. §1.492(a)(3) (small entity)
 - \$65.00 surcharge fee under 37 C.F.R. §1.492(e) (small entity);
- ✓ Please charge any additional fees to Deposit Account No. 04-1679;
- ✓ Other: Post Card for return.

04/08/2004 CNGUYEN 00000096 09486549

02 FC:2001	385.00 OP
03 FC:2051	65.00 OP
04 FC:2202	63.00 OP
05 FC:2201	86.00 OP
06 FC:9998	6.00 OP

Adjustment date: 04/21/2004 CNGUYEN
04/08/2004 CNGUYEN 00000096 09486549
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03 FC:2051 -65.00 OP
04 FC:2202 -63.00 OP
05 FC:2201 -86.00 OP
06 FC:9998 -6.00 OP

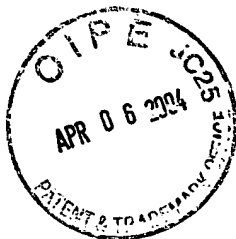
Date: April 6, 2014

Respectfully submitted,

Lewis F. Gould, Jr.

Lewis F. Gould, Jr.
Registration No. 25,057
Duane Morris LLP
One Liberty Place
Philadelphia, PA 19103-7396
(215) 979-1282

Docket No. D4932-25



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APR 09 2004

OFFICE OF PETITIONS

DOCKET NO. D4932-25

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: OSTGAARD, Odd Terje

Application No. 09/486,549

International Application No. PCT/NO98/00232

International Filing Date: 5 August 1998

Priority Date: 27 August 1997

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For: SAFETY BOX/INCINERATION CONTAINER FOR USED SYRINGES

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

CERTIFICATE UNDER 37 C.F.R. §1.8(a)

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED THIS DATE WITH THE UNITED STATES POSTAL SERVICE ON THE DATE SHOWN BELOW AS "EXPRESS MAIL POST OFFICE TO ADDRESSEE" MAILING LABEL NO. EV 306256965 US ADDRESSED TO MAIL STOP PETITION COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

Lewis F. Gould, Jr.
Lewis F. Gould, Jr., Reg. No. 25,057

April 6, 2004
Date

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. §1.137(b)**

Sir:

The above-identified application became abandoned as to the United States because the U.S. Basic National Fee (37 C.F.R. 1.492(a)(3)) was not paid within thirty months from the priority date and because the fee under 37 C.F.R. 1.492(e) was deemed not paid.

The date of abandonment is the day after the date on which the U.S. Basic National Fee was due.

The fees were deemed not paid because, at a time after the fee was due and had been ostensibly paid by Applicant's representatives at the time, the PTO took the position that the person who authorized the fee payment by charge to a Deposit Account, was not properly authorized to make charges to the Deposit Account at the time such fee was ostensibly paid.

Applicant hereby petitions for revival of the application as a pending application on grounds that the entire delay in prosecution of the application was unintentional.

In particular, applicant demonstrates by documentary evidence and by verified facts from persons with knowledge of the facts, that an effort was made by applicant's representatives to pay the subject fee when due. The PTO has expressly acknowledged that the fee was paid (at least payment was attempted) in a previous official paper.

Furthermore, applicant by its undersigned representatives hereby states that the entire delay in filing the required fee from the due date until the filing of this petition was unintentional.

A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal Disclaimer with disclaimer fee—required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

1. The required petition fee (37 C.F.R. §1.17(m)) for small entity, namely \$665.00 for unintentional abandonment of an international application, is enclosed.
2. The required reply and/or fee is submitted herewith, namely the \$540.00 U.S. Basic National application fee for a small entity (37 C.F.R. §1.492(a)(3)) and the \$65.00 surcharge fee for failure to provide an oath or declaration within thirty days of the priority date for a small entity (37 C.F.R. §1.492(e)).
3. Since this international application has an international filing date after June 8, 1995, no terminal disclaimer is required.
4. Applicant hereby states by its undersigned representative that the entire delay in payment of the fees mentioned in preceding paragraph 2. was unintentional.

On August 5, 1998, applicant, through its Norwegian counsel, Actio Lassen AS, filed international application PCT/NO98/00232 which claimed a priority date of 27 August 1997. A copy of the international application was communicated to the U.S. patent and Trademark Office from the International Bureau on March 18, 1999. A proper Demand was filed on January 8, 1999. Accordingly, the 30-month period for paying the U.S. Basic national Fee expired at midnight on February 27, 2000.

On February 25, 2000, the applicant, through its Norwegian counsel, retained the firm of Akerman, Senterfitt & Edison, PA ("the Akerman firm") to enter the application into the U.S. National Phase. The Akerman firm timely filed the appropriate transmittal form designating the fees be charged to Deposit Account No. 50-951 for two U.S. national phase applications, including the present application.

In a Notification mailed February 7, 2001 (concerning a petition as to whether the same case entered the US national phase twice), the PTO had stated "only one national stage of a PCT application is permitted," and "it appears that only one filing fee was charged to Applicant's deposit account"

On November 14, 2002, applicant through its Norwegian counsel, retained Duane Morris LLP, to represent applicant in connection with the above-identified U.S. patent application. Applicant's present counsel, immediately requested the transfer of the file from the Akerman firm, and obtained a Power of Attorney signed by the applicant/inventor for this application.

On November 21, 2002, at approximately 1 PM, a staff member of the firm of Duane Morris LLP, was advised by the U.S. PTO Help Desk, and the PCT Help Desk on the same date, that the application was valid, was in the pre-examination processing stage, and was NOT abandoned. Applicant's present counsel was invited to prepare and file written request to obtain further information.

Upon receipt of the signed Power of Attorney, applicant's present counsel, Lewis F. Gould, Jr. obtained custody of the file from the Akerman firm, and duly filed the Power of Attorney and Change of Correspondence Address on January 13, 2003. On February 10, 2003, applicant's counsel filed a Request for Status of the above-identified patent application.

On April 14, 2003, the PCT Legal Office, issued a Notification, by Daniel Stemmer, a PCT Legal Examiner in the PCT Legal Affairs Division of the Office of PCT Legal Administration.

Mr. Stemmer advised that Deposit Account 50-0951 did not list as a user the attorney who had signed the transmittal letter, Peter J. Manso of the Ackerman firm, and as a result the fees were considered unpaid. Mr. Stemmer declared the application abandoned as to the United States of America for failure to pay the basic national fee by thirty months, and suggested that applicant(s) file a petition under 37 CFR §1.137 to revive the application. The subsequent notifications issued by the U.S. PTO, such as (1) the Notification of Missing Requirements, and (2) Notification mailed on February 7, 2001 stating the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000, and also stating the surcharge under 37 CFR 1.492(e) be charged to the deposit account of the Akerman firm, namely, Account No. 50-0951 were VACATED.

After a phone call to Mr. Stemmer, applicant's current counsel learned that a Notice of Abandonment of the Application was issued on May 10, 2003.

Enclosed with this petition and made a part hereof, is the Declaration of J. Rodman Steele, Jr. of the Ackerman firm addressing the status of Deposit Account 50-0951 and Mr. Manso's use of the account. It appears from the available documentation that the charge was proper and that the Account contained the necessary balance. However applicant does not dispute the lack of payment at this point and requests simply that the application be revived on the ground that the lack of payment was unintentional.

The entire delay in submitting the U.S. Basic Filing Fee was *unintentional*. Accordingly, applicant and applicant's counsel of record hereby timely submits this petition to revive U.S. Patent Application Serial No. 09/486,549. In view of this submission, applicant requests that the application be revived as a pending application and examined in due course.

If any additional fee is required or overpayment is to be credited, please debit or credit Deposit Account No. 04-1679.

Respectfully submitted,

Date: April 6, 2007

Lewis F. Gould, Jr.

Lewis F. Gould, Jr.

Registration No. 25,057

DUANE MORRIS LLP

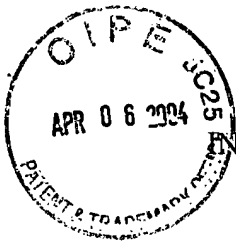
One Liberty Place, 1650 Market Street

Philadelphia, PA 19103-7396

215-979-1282

Docket No. D4932-25

PHI\1184760.2



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of OSTGAARD

Application No. 09/486,549

PCT No. PCT/NO98/00232

Int. Filing Date: August 5, 1998

Priority Date: August 27, 1997

For: SAFETY BOX/INCINERATION CONTAINER FOR USED SYRINGES

DECLARATION OF J. RODMAN STEELE, JR.

I, J. Rodman Steele, Jr., am admitted to practice before the U.S. Patent and Trademark Office, having Registration No. 25,931.

I commenced practice with the Firm of Akerman Senterfitt as head of the Intellectual Property Section on October 1, 2000.

At the request of Duane Morris LLP, I have researched the In re Application of OSTGAARD matter and state the following:

Upon review of the Akerman Senterfitt records, it appears that Peter J. Manso began using the Akerman Senterfitt account, Deposit Account No. 50-0951 around July 26, 1999, and used the account regularly up until January 21, 2001. It appears that Deposit Account 50-0951 was actually opened May 17, 1999 (see Exhibit A).

During the time from at least July 26, 1999 until October, 2000, it appears that Peter J. Manso was the principal patent attorney using the account.

I am enclosing as Exhibits B, C, and D monthly statement of deposit accounts from January 31, 2000 through March 31, 2000, which shows that sufficient funds were in the Akerman Senterfitt account during these time periods.

I am also enclosing as Exhibit E a Communication from the U.S. Patent and Trademark Office dated 09/19/2000 recognizing Peter Manso as a current deposit account user. I have been able to find no other forms dated earlier like this; however, as stated above, Peter Manso regularly used the account from July 26, 1999 through January 21, 2001.

Further, Affiant sayeth naught.

Date: 3/23/04


J. Rodman Steele, Jr.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

May 17, 1999

EXHIBIT A

Akerman, Senterfitt & Eidson, PA
Attn. Marilyn Collazo
450 East Las Olas Blvd.
Suite 950
Ft. Lauderdale, FL 33301

This letter acknowledges receipt of your deposit account application.

Deposit Account number 50-0951 has been established for you. This is an *UNRESTRICTED* account. With this type of account, you may charge any type of service provided by the Patent and Trademark Office. You are required to maintain a balance of at least \$1,000.00 on the last business day of the month. If your account is below this minimum, your account will be assessed a \$25.00 service charge.

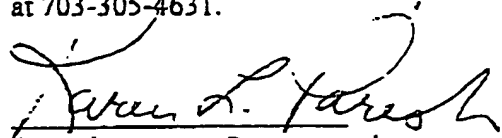
The Patent and Trademark Office maintains a status inquiry line whereby you may obtain your balance at any given moment. In order to access your account information, you will need the account number and access code. The access code for your account is 4329.

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Deposit Account Representative



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LINDA K FOWLIE
255 S. ORANGE AVE. 17TH FLOOR
PO BOX 231
ORLANDO FL 32802

FINA

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